

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - Room 5417  
Cincinnati, OH 45201

Date: OCT 02 2001

Employer Identification Number:

Person to Contact - I.D.

Contact Telephone Numbers:

Phone

FAX

CERTIFIED MAIL

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(7) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth.

The evidence presented disclosed that you were incorporated on [REDACTED] in [REDACTED]. The purpose for which this club "is formed and shall at all times be operated exclusively as a recreational boat club."

The information submitted with your application 1024 states that the "[REDACTED]" is a recreational boat club formed in [REDACTED]. Operations commenced in [REDACTED]. It is comprised of [REDACTED] members who have purchased a [REDACTED] interest in the land and buildings in [REDACTED] formerly owned by [REDACTED].

The boat club is managed by [REDACTED] the current managing agent. All members are responsible for [REDACTED] of all real estate taxes and for [REDACTED] share of the expenses to operate the boat club. A budget is created and approved at an annual meeting. This determines the amount billed to the members for the following year. If the actual amount of expenses exceeds the billed amount, the members are billed the difference. If the expenses were to be less than billed, all members would receive a credit towards the following year's expenses.

Since operations commenced [REDACTED], the club has sold gasoline and provided boat moorings for rent to members and the general public. The activity is intended to further the club's purpose of providing services required as a recreational facility. Any profit realized from the sale of gasoline at the boat club and the mooring rental fees are included in the budget to offset future club expenses."

The management agreement set forth from [REDACTED] to [REDACTED] gives exclusive rights for the agent, [REDACTED] to rent, lease, operate and manage the property known as [REDACTED]. It gives the agent authority and powers and agrees to assume the expenses in connection with the advertising the availability for rental of the herein described premises or any part thereof, and to display "for rent" signs thereon; to sign, renew and/or cancel leases for the premises or any part thereof; to collect rents due, to terminate tenancies, to evict tenants and to recover possession of said premises and to serve in the name of the owner, [REDACTED].

The organization's LAND USE REGULATIONS has covenants and restrictions which must be followed. The organization is to be operated as a boat berthing facility. The covenants and restrictions are:

1. Any person or entity succeeding to the title of the within described premises shall take such title subject to mandatory membership in [REDACTED].
2. They will be subject to all terms, conditions and requirements of the club.
3. No person or entity shall own less than [REDACTED] interest in said real estate.

In your response dated [REDACTED], you have indicated that there are [REDACTED] boat slips at the Marina and [REDACTED] interest in the land is conveyed by Warranty Deed and the grantee becomes a "member." The only occurrence where there are tenants in slips is when an owner leases it to someone else. The leasing is not done through the club.

Another activity is the selling of gasoline for boat use to the general public. The public knows where the gas is being sold because of signs leading to the pump. There are [REDACTED] moorings which are leased to the general public. Any profits from these activities come back to the club to keep the costs to the owners down.

Your response of [REDACTED], also, indicates that a member can sell their membership just like a parcel of real estate. The member is entitled to the use of the boat launch, an assigned slip, the parking lot for their car and use of the small bathhouse which offers a table and chairs plus a rest room with sink and toilet.

The financial information indicates that gas revenues is [REDACTED]% of revenues in [REDACTED] and [REDACTED]% in [REDACTED]. The [REDACTED] mooring rentals to the general public is [REDACTED]% of the revenues for both [REDACTED] and [REDACTED]. The gas expenses total \$[REDACTED].



Section 501(c)(7) of the Internal Revenue Code provides exemption to clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder. In general, this exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

Section 1.501(c)(7)-1 of the Income Tax Regulations states that section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. A club which engages in business, such as making its social and recreational facilities available to the general public or selling products is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation or social purposes.

Revenue Ruling 58-589, 1958-2, CB, 266 gives the criteria or tests for determining whether an organization qualifies for exemption under section 501(c)(7) of the Code. It states that section 501(c)(7) applies only to clubs which are organized and operated exclusively for pleasure, recreation and other nonprofitable purposes. It also indicates that engaging in business like making its facilities available to the general public or selling products is not organized and operated exclusively for pleasure, recreation and other nonprofitable purposes. Advertising its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, and social purposes.

Your organization does not comply with the criteria as stated in Revenue Ruling 58-589, 1958-2, CB, 266 because it is not organized or operated for pleasure, recreation or social purposes at all. There is no comingling of club members. The club operates as a boat berthing facility. There are [REDACTED] boat slips at the Marina and an individual who has a [REDACTED] interest in the land is conveyed by warranty deed and the grantee becomes a "member." This business sells gasoline to the general public who knows where the gas is being sold because of signs leading to the pumps. This is prima facie evidence that the club is engaging in business. There are [REDACTED] moorings which are leased to the

general public. Also, the "member" can sell their membership just like a parcel of real estate. Therefore, your Organization is not organized and operated as a social club within the meaning of section 501(c)(7) of the Internal Revenue Code.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

*Steven J. Miller*

Director, Exempt Organizations

Enclosures: 2